

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN THE MATTER OF THE COMPLAINT  
OF TRADEWINDS TOWING, LLC, AS  
ALLEGED OPERATOR, AND  
MAGAZINE TUG, LLC, AS OWNER, OF  
THE VESSEL REBEKAH, OFFICIAL  
NUMBER 623866, AND HER ENGINES,  
MACHINERY, GEAR, TACKLE,  
APPAREL AND ALL OTHER  
APPURTENANCES, PETITIONING FOR  
EXONERATION FROM AND/OR  
LIMITATION OF LIABILITY

IN ADMIRALTY

NO. 2:24-cv-00246

**COMPLAINT FOR EXONERATION  
FROM AND/OR LIMITATION OF  
LIABILITY**

**COME NOW**, through undersigned counsel, Tradewinds Towing, LLC and Magazine Tug, LLC (collectively "Limitation Petitioners"), as alleged operator and owner of the M/V REBEKAH, her engines, tackle, gear, furniture, appurtenances, etc. (hereinafter "the Vessel"), who files this Complaint for Exoneration From or Limitation of Liability pursuant to 46 U.S.C. § 30511, and respectfully aver upon information and belief as follows:

1. This is an action for exoneration from or limitation of liability, civil and maritime, under the purview of 46 U.S.C. §§ 30501, *et seq.* (the "Limitation Act"), and an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This

COMPLAINT FOR EXONERATION  
FROM AND/OR LIMITATION OF  
LIABILITY - 1  
CASE NO. 2:24-CV-00246

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1 action is governed by Rule F of the Supplemental Rules for Admiralty or Maritime Claims of the  
 2 Federal Rules of Civil Procedure. This Honorable Court has jurisdiction over this action by virtue  
 3 of the Limitation Act and by virtue of 28 U.S.C. § 1333.

4         2.       The Vessel has not been attached or arrested to answer for any claim with respect  
 5 to which Limitation Petitioners seek exoneration from or limitation of liability through these  
 6 proceedings. As of the date of this filing, Limitation Petitioner Tradewinds Towing, LLC has  
 7 been sued by Stephen Dufrene (“Dufrene”) for personal injuries under the Jones Act (46 U.S.C.  
 8 § 30104) in the Superior Court of the State of Washington in and for the County of King, bearing  
 9 Case No. 23-2-16972-7, styled *Stephen Dufrene v. Foss Maritime Company and Tradewinds*  
 10 *Towing Company*. Venue is therefore proper in the United States District Court for the Western  
 11 District of Washington, pursuant to Rule F(9) of the Supplemental Rules for Certain Admiralty  
 12 and Maritime Claims.

14         3.       At all times pertinent hereto, Limitation Petitioner, Tradewinds Towing, LLC is a  
 15 Louisiana company with its principal place of business in New Orleans, Louisiana. At all material  
 16 times, Tradewinds Towing, LLC was Dufrene’s employer. Foss Maritime Company, LLC and  
 17 Foss Offshore Wind Holdings, LLC (potential claimants identified below) have alleged that  
 18 Tradewinds, Towing, LLC was the operator of the Vessel. To the extent that Tradewinds Towing,  
 19 LLC is found to be the operator of the Vessel, it is entitled to limit its liability “as owner” pursuant  
 20 to 46 U.S.C. §§ 30501, *et seq.* (the "Limitation Act").

22         4.       At all times pertinent hereto, Limitation Petitioner, Magazine Tug, LLC is a  
 23 Louisiana company with its principal place of business in New Orleans, Louisiana. On the day of  
 24

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1 Dufrene's alleged accident, Magazine Tug, LLC was the owner of the Vessel. Magazine Tug,  
 2 LLC is entitled to limit its liability "as owner" pursuant to 46 U.S.C. §§ 30501, *et seq.* (the  
 3 "Limitation Act").

4 5. The M/V REBEKAH, Official No. 623866, is a U.S.-flagged towing vessel  
 5 measuring seventy-three (73) total feet in length, twenty-six (26) feet in width, and eleven (11)  
 6 feet in depth. The Vessel was built in 1980. The Vessel primarily operates as an offshore tug.  
 7

8 6. At all times when they were responsible for doing so, Limitation Petitioners  
 9 exercised due diligence to make the Vessel seaworthy in all respects. At all times hereinafter  
 10 described, the Vessel was, in fact, tight, staunch, strong, fully and properly equipped and manned,  
 11 well and sufficiently fitted with suitable machinery, gear, tackle, apparel, and appliances, and in  
 12 all respects seaworthy and fit and proper for the service in which the Vessel was engaged.

13 7. On May 1, 2023, Magazine Tug, LLC and Foss Offshore Wind Holdings, LLC  
 14 executed a Bareboat Charter of the Vessel. On information and belief, Foss Offshore Wind  
 15 Holdings, LLC entered into a Sub-Bareboat Charter of the Vessel with Foss Maritime Company,  
 16 LLC.  
 17

18 8. On May 5, 2023, Dufrene was working aboard the Vessel when he allegedly  
 19 sustained injuries to his left foot and ankle while the Vessel was under charter and sub-charter by  
 20 Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC, respectively ("Incident").  
 21 Dufrene is at fault for the Incident for the following reasons, including but not limited to:

- 22 a) Dufrene's own negligence, fault, assumption of the risk, and/or failure to mitigate;
- 23 b) Failure to follow applicable safety rules and protocols;
- 24

1 c) Failure to use due care under the circumstances; and

2 d) Any other acts of negligence or fault that will be proven at trial.

3 9. Limitation Petitioners were in no way negligent or at fault for the Incident. The  
4 Incident was likewise not caused by the alleged unseaworthiness of the Vessel.

5 10. This Complaint is filed timely under Admiralty Rule F(1), because it was filed  
6 within six months from the date Limitation Petitioners received written notice of a claim on  
7 August 22, 2023 when Dufrene filed his lawsuit styled *Stephen Dufrene v. Foss Maritime*  
8 *Company and Tradewinds Towing Company*, Cause No. 23-2-16972-7, in the Superior Court of  
9 the State of Washington in and for the County of King.  
10

11 11. The aforementioned Incident, and any losses, and/or damages allegedly resulting  
12 therefrom, were not caused or contributed to by any fault, neglect, negligence, or lack of due care  
13 on the part of Limitations Petitioners, their respective agents, servants, employees, or any other  
14 persons for whom Limitation Petitioners might be responsible, or by any unseaworthiness of the  
15 Vessel.  
16

17 12. Besides the aforementioned suit, Limitation Petitioners are, as of this date,  
18 unaware of any other demands, suits, petitions, unsatisfied claims of liens, or liens filed against  
19 Limitation Petitioners or the Vessel in connection with the Incident made the subject of this  
20 Complaint.

21 13. Limitation Petitioners are entitled to exoneration and/or limitation under the  
22 circumstances.  
23  
24

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1           14.     The Incident, any physical damage, injuries, contingent losses as well as all other  
2 losses, damages, expenses, and costs resulting therefrom were caused and occurred without the  
3 privity or knowledge of Limitation Petitioners.

4           15.     Limitation Petitioners have a reasonable basis upon which to believe it is possible  
5 that claims have been and/or will be asserted and prosecuted against them in amounts exceeding  
6 the value of the Vessel and her pending freight. Specifically, as noted above, the lawsuit brought  
7 by Dufrene has been filed in connection with the Incident and Foss Offshore Wind Holdings,  
8 LLC and Foss Maritime Company, LLC have sought exoneration from and/or limitation of  
9 liability in this Court. Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC  
10 will likely make claims against Limitation Petitioners for contractual and tort indemnity along  
11 with claims for contribution.  
12

13           16.     Limitation Petitioners aver that the following persons and entities are the known  
14 potential claimants in this Limitation Action:  
15

16  
17           a) Stephen Dufrene  
18             c/o Brian Beckom *Pro Hac Vice*  
19             Brendan Fradkin *Pro Hac Vice*  
20             VB Attorneys  
21             6363 Woodway, Suite 400  
22             Houston, Texas 77057  
23             713-224-7800

24           b) Foss Offshore Wind Holdings, LLC  
25             c/o Raymond T. Waid  
26             Elizabeth A. Strunk  
              701 Poydras Street, Suite 5000  
              New Orleans, Louisiana 70139  
              (504) 556-4042 Telephone

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c) Foss Maritime Company, LLC  
c/o Raymond T. Waid  
Elizabeth A. Strunk  
701 Poydras Street, Suite 5000  
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(504) 556-4108 Facsimile

17. The fair market value of the Limitation Petitioner's interest in the REBEKAH at the time of the incident was TWO MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,500,000.00) U.S. DOLLARS total, and she had no pending freight. Accordingly, the total value of Limitation Petitioners' interest in the REBEKAH, and her pending freight is \$2,500,000.00. Limitation Petitioners hereby adopt the Declaration of Value submitted by Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC for the M/V REBKEAH in a related Limitation Action regarding the same Incident which is pending before this Honorable Court as Case No. 2:24-cv-00237. (*See* Declaration of Value attached hereto as **Exhibit 1**).

18. Limitation Petitioners aver that because the aforementioned Incident and the alleged losses, damages and/or injuries allegedly related thereto were not caused or contributed to by any fault, neglect, negligence or lack of due care on the part of Limitation Petitioners or their respective agents, servants, employees, or any other persons for whom Limitation Petitioners might be responsible, or by any unseaworthiness of the Vessel, Limitation Petitioners are entitled to and hereby claims exoneration from liability for any and all alleged injuries, losses or damages allegedly occurring as a result of the Incident, as well as any and all claims related to the Incident

1 that have yet to be asserted. Limitation Petitioners aver that they have valid and complete  
2 defenses on the facts and on the law.

3 19. Although Limitation Petitioners deny any liability to any party, and although  
4 Limitation Petitioners do not know the extent, nature or total amount of all claims which may be  
5 made for loss or damage arising out of the Incident described above, Limitation Petitioners  
6 anticipate and believe that suits and claims will be asserted and prosecuted against Limitation  
7 Petitioners in amounts exceeding the value of the Vessel at the conclusion of the voyage during  
8 which the aforementioned Incident took place.  
9

10 20. As such, without admitting but affirmatively denying all liability, and strictly in  
11 the alternative to its claim for exoneration from all liability, losses, damages and/or injuries  
12 allegedly occasioned by or resulting from the aforesaid Incident, or allegedly done, occasioned,  
13 or incurred on the subject voyage, Limitation Petitioners allege and aver that if Limitation  
14 Petitioners should be held responsible to any person, entity or other party by reason of any fault  
15 attributed to Limitation Petitioners, their respective agents, servants, employees, or others for  
16 whom Limitation Petitioners could be held responsible, or to the Vessel, in connection with the  
17 above-described Incident, then Limitation Petitioners are entitled to and claims the benefit of  
18 limitation of liability as provided in the Limitation of Liability Act, 46 U.S.C. §§ 30501, *et seq.*,  
19 and all laws supplementary thereto and amendatory thereof, and all other applicable law and  
20 jurisprudence, to limit their liability to TWO MILLION FIVE HUNDRED THOUSAND  
21 DOLLARS AND NO/100 (\$2,500,000.00) U.S. DOLLARS, the value of Limitation Petitioners'  
22 interest in the Vessel immediately before and after the Incident.  
23  
24

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1           21.     Should it later appear that Limitation Petitioners are or may be liable and that the  
2 amount or value of their interest in the Vessel and her pending freight, as aforesaid, is not  
3 sufficient to pay all losses in full, then all claimants shall be made to share *pro rata* in the aforesaid  
4 sum, saving to all such claimants any rights of priority they may have as ordered by this Honorable  
5 Court, or as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure, the  
6 General Maritime Law, and by the rules and practices of this Honorable Court.

7           22.     Limitation Petitioners reserve the right to plead all applicable affirmative defenses,  
8 claims, cross-claims and counterclaims against any claimant, including but not limited to the right  
9 to plead set off, the right to plead comparative fault, the right to plead compromise and settlement,  
10 the right to plead that the Incident was unavoidable by Limitation Petitioners, the right to plead  
11 the Act of God defense, the right to plead that the Incident resulted from violations of law or  
12 permits by other parties or particular claimants, the right to plead that the particular claimants  
13 have no right to pursue claims for the alleged unseaworthiness of the Vessel, and the right to file  
14 cross-claims and/or third-party actions for damages or for indemnity or contribution against all  
15 persons and entities that may be legally responsible for the incident described herein.  
16

17           23.     With this Complaint, Limitation Petitioners seek to preserve their right to limit  
18 their liability within the six month deadline from written notice as required by Supplemental Rule  
19 F(1) of the Supplemental Rules for Admiralty or Maritime Claims. Limitation Petitioners are  
20 currently in the process of obtaining security and/or a bond and will deposit the proper security  
21 with the Court within thirty (30) days of the filing of this Complaint. It is not a jurisdictional  
22 prerequisite to claim the benefits of the Limitation Act that security be posted simultaneously  
23  
24

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1 with the complaint or within six months of notice of a claim. *Guey v. Gulf Insurance Co.*, 46 F.3d  
 2 478, 481 (5th Cir. 1995). Pursuant to Supplemental Rule F(1), it is within the full discretion of  
 3 the district court to direct Limitation Petitioner when to post security and the amount required. *Id.*  
 4 This Complaint is being filed due to the requirement that such actions be filed within six months  
 5 of notice of a claim subject to limitation. Once the security is posted, the limitation action may  
 6 move forward in typical fashion with the issuance of an injunction and concursus of claims and  
 7 notice to claimants with the deadline in which claimants may file against Limitation Petitioners.  
 8

9 24. All and singular, the premises are true and correct and within the admiralty and  
 10 maritime jurisdiction of the United States and of this Honorable Court as an admiralty and  
 11 maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

12 **WHEREFORE, PREMISES CONSIDERED**, Limitation Petitioners, Tradewinds Towing,  
 13 LLC and Magazine Tug, LLC, respectfully request and pray:

14 1. That this Honorable Court enter an order approving a temporary dispensation from  
 15 security. That Limitation Petitioners shall post the security required by 46 U.S.C. § 30511(b) and  
 16 Supplemental Admiralty Rule F(1) within thirty (30) days from filing this action;  
 17

18 2. That once the Limitation Petitioners post security, this Honorable Court issue a  
 19 monition and notice to all persons, firms, corporations or other entities asserting any claims for  
 20 any and all alleged losses, damages or injuries with respect to which Tradewinds Towing, LLC  
 21 and Magazine Tug, LLC seek exoneration from or limitation of liability, admonishing them to  
 22 file their respective claims with the Clerk of Court and to serve on the attorneys for Tradewinds  
 23 Towing, LLC and Magazine Tug, LLC a copy thereof on or before the date specified in the notice,  
 24

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1 or be forever barred and permanently enjoined from making and filing any claims with respect to  
2 the Incidents described more fully herein;

3 3. That once the Limitation Petitioners post security, this Honorable Court issue an  
4 injunction restraining the commencement or prosecution of any action or proceeding of any kind  
5 against Tradewinds Towing, LLC and Magazine Tug, LLC, their respective agents, servants,  
6 affiliates, their employees, and all of their respective insurers, sureties, or underwriters, or any of  
7 their property, including but not limited to the M/V REBEKAH, whether *in personam*, by  
8 attachment, or *in rem*, for any losses, damages, and/or injuries allegedly arising out of the Incident  
9 described in this Complaint, or allegedly occurring during the subject voyage described in this  
10 Complaint;  
11

12 4. That if any claimant who shall have filed a claim shall also file an exception  
13 bringing forward evidence to controvert the value of the Vessel, as alleged herein, this Court shall  
14 cause due appraisement to be had of the value of the Vessel following the Incident and of the  
15 value of Tradewinds Towing, LLC and Magazine Tug, LLC's interest therein, following which  
16 event this Court shall, if necessary, enter an Order for filing of an amended Letter of Undertaking  
17 or other appropriate security for the aggregate value, as so determined, of Tradewinds Towing,  
18 LLC and Magazine Tug, LLC's interest in said Vessel;  
19

20 5. That this Honorable Court adjudge that Tradewinds Towing, LLC and Magazine  
21 Tug, LLC, their respective affiliated companies, agents, servants, employees, and all of their  
22 respective insurers, sureties, and underwriters, and the M/V REBEKAH, are not liable to any  
23 extent whatsoever for any losses, damages and/or injuries or for any claims therefor, in any way  
24

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1 arising from or in consequence of the subject voyage, or in consequence of otherwise connected  
2 with the matters and happenings referred to in this Complaint;

3         6. Or, strictly in the alternative, if this Court should adjudge that Tradewinds Towing,  
4 LLC and Magazine Tug, LLC, their respective affiliates, agents, servants, employees, or any of  
5 their respective insurers, sureties or underwriters, and/or the M/V REBEKAH are liable in any  
6 amounts whatsoever, that the Court should then adjudge that said liability shall be limited to TWO  
7 MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,500,000.00) U.S.  
8 DOLLARS, the value of Tradewinds Towing, LLC and Magazine Tug, LLC's interest in the  
9 Vessel immediately after the incident, said amount to be divided *pro rata* among all claimants;  
10 and that a judgment be entered discharging Tradewinds Towing, LLC and Magazine Tug, LLC,  
11 their respective affiliates, agents, servants, employees and all of their respective insurers, sureties  
12 and underwriters, and the M/V REBEKAH of and from any and all further liability and forever  
13 enjoining and prohibiting the filing and prosecution of any claims against Tradewinds Towing,  
14 LLC and Magazine Tug, LLC, their respective affiliates, agents, servants, employees and all of  
15 their respective insurers, sureties and underwriters, or any of their property, including the M/V  
16 REBEKAH, in any way arising from or in consequence of the subject Incident, or in consequence  
17 of or in connection with the matters and happenings referred to in this Complaint; and  
18

19  
20         7. That Tradewinds Towing, LLC and Magazine Tug, LLC have such other and  
21 further relief as in law and justice they may be entitled to receive.  
22

23 ///

24 ///

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Respectfully submitted this 22<sup>nd</sup> day of February, 2024.

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THOMSEN, LLP

By: s/ Michelle Buhler

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